

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN GAY ANN MASOLO**, on March 2, 2001 at 3:00 P.M., in Room 137B Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Norma Bixby (D)
Rep. Gary Branae (D)
Rep. Nancy Fritz (D)
Rep. Verdell Jackson (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman, (R)
Rep. Jeff Mangan (D)
Rep. Joe McKenney (R)
Rep. John Musgrove (D)
Rep. Alan Olson (R)
Rep. Ken Peterson (R)
Rep. Butch Waddill (R)
Rep. Allan Walters (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Bob Lawson, Vice Chairman (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Nina Roatch, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 130, 2/19/2001
Executive Action: HB 31; HB 121

HEARING ON SB 130

Sponsor: SENATOR FRED THOMAS, SD 31, BITTERROOT VALLEY

Proponents: John Powell, Stevensville Community Foundation
Bob Vogel, Montana School Boards Association
Dave Puyear, Montana Rural Education Association
Erik Burke, Montana Education Association-Montana
Federation of Teachers

Opponents: None

Informational Witnesses: None

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, BITTERROOT VALLEY, said SB 130 is designed to allow a public private partnership with school properties that have been purchased by a local school district. To give an example. The Stevensville Community Foundation wanted to work with the local school district to build an arts and culture center on property the school had purchased with local taxpayer dollars. Note that this was not land the school district was given. The plan was to build a community arts and culture center which the school would have access to for activities during the day. They learned that it would have to be in the name of the community foundation in order to get larger, out of area grants and donations to build the center. The way the law is, it needs to be changed to allow the community to decide an issue of this nature. SB 130 says if this is something the school district wants to do, (give land to a foundation), then the voters must approve this transaction, see Line 29 of the Bill. It is important to note that this is not to be confused with any state lands or any land grant lands. All this pertains to is land the school district purchased; and in this case the land needs to go into the name of the local foundation to get support from others.

Proponents' Testimony:

John Powell, Stevensville Community Foundation said they have been in existence seven years and have two grant cycles a year where they give money to local charities and philanthropic organizations. They have established a permanent, long term endowment dedicated to long term philanthropy. On this project, the school land is 4 ½ acres. Along with that, the foundation has purchased a 3 ½ acre lot on the corner. This would combine the 3 ½ acres the foundation owns privately, with the 4 ½ acres the school district has. This would facilitate parking and

building access. This is not a short term project. Over the last ten years, Stevensville is the fastest growing town in Montana, percentage wise; and a four lane highway is scheduled through there, so major changes are coming. They are trying to stay ahead of the curve and establish an area that will centralize facilities that will be needed in the future. In order to facilitate that, the foundation needs the school land deeded to them. He handed out a packet containing a conceptual site plan, a board member letter showing support from the school board, two letters from the County Attorney, and a letter from The Stevensville Community Foundation explaining their proposal, **EXHIBIT (edh48a01)**. This legislation was amended to add language that states if the terms of the agreement are not met, that reversionary clauses in the deed allow for the return of the land to school district ownership. It is still flexible enough that a community could tailor it to their particular situation, but language is very definite, that you have to fulfill the obligations of the agreement.

Bob Vogel, Montana School Boards Association said a resolution of the School Boards Association approves of this in concept and SB 130 reflects the language of their resolution. It did emanate from Stevensville on this particular project, but they think it applies to a number of other school districts. The reason for support is that it gives school districts the ability to be a partner in their local communities. This Bill allows the district to exchange land for a binding commitment from another public or private entity, as long as the school land is used for a purpose that benefits the school district. The Bill contains strong safeguards in protecting the school district's interests, through a requirement that the deed must contain a reversionary clause that returns the land to school district ownership if the binding commitment is not fulfilled. In addition, the transaction must be approved by the voters of the district. The school district is prohibited from exchanging land that is granted by conditional deed or state trust land. With all these measures of accountability, SB 130 allows the school district to be a good neighbor and provide a benefit to the community while protecting its own beneficial interests.

Dave Puyear, Montana Rural Education Association said they support HB 130. They have a number of schools that are looking at similar types of foundations and relationships between the public and private sectors in our schools. This is a measure that is of strong interest because it provides flexibility to schools, gives boards, trustees and communities other avenues to work together. It speaks directly to the issue of local control and puts this decision where it belongs, in the hands of local voters and trustees.

Erik Burke, Montana Education Association-Montana Federation of Teachers said they support HB 130.

Opponents' Testimony: None

Informational Witnesses: None

Questions from Committee Members and Responses:

REP. LEHMAN asked why the school district would not consider selling the property to the foundation? **SENATOR THOMAS** said because the foundation doesn't have the money to buy it. They are trying to get all the money they can raise locally and outside the area into the building. The values and benefits the kids will get out of it will far out-weight what the school put into it. This is a multi-million dollar project, which the school only put \$100,000 to \$200,000 into. **REP. LEHMAN** asked if it is a possibility under the way the law is written that in the future there might be a "fly by night corporation" that wants to acquire property adjacent to a school and it doesn't work out? **SENATOR THOMAS** said that anything is possible, but in reality, this is going to be local people; our local school board examining these things. In addition to going through public ballot, the school district would not say they are going to give up valuable property for something they are not sure of. The mechanisms are there for careful scrutiny to eliminate that sort of thing.

REP. PETERSON said if you make a commitment and it doesn't work out, there is a reversionary clause in the deed if it is drawn tightly. Is it correct that the property would revert back to the school? **SENATOR THOMAS** said that is correct. This language is in the Bill on the reversion, and we tried not to draw that too tightly. There is potential that you wouldn't want the land back if it was built upon. There might be a lot of liens on it, and they would automatically revert to the school for payment. **REP. PETERSON** asked about the quid pro quo for the school. The school gets to use it during the day all the time; is that provided in the deed? **SENATOR THOMAS** said he could not speak for the foundation, as they do not want it in public record. There is not a quid pro quo because they can not have that linkage solid in a deal. The way foundations give money, they don't want to give to a school district. This is something the foundation came up with in their community that they wanted to do, and it was all moving forward until they ran into this problem with the law. In this situation, will there be great benefits to our kids in our community going to school? The answer is absolutely yes; music, arts, chorus, performing arts, etc. Those opportunities are not available now to the degree they would like. The community will have those things available in the evenings, but

the contract can not say the facility will be available all day.

REP. PETERSON said there is no quid pro quo to the school, but this is viewed as a great community benefit because children growing up and going through school would be exposed to greater cultural events. **SENATOR THOMAS** said that is the case in their situation. This is a community project where the school, the community and the foundation are working on this together.

REP. MANGAN said he would like to look at HB 130 from the potential of others in the state to use this. On the quid pro quo, part of the land exchanged is consideration of the service that benefits the school. In your situation, if there isn't anything specific, does the Bill meet your needs? **SENATOR THOMAS** said it is fine. Given the proposal that will go to the public, the owners of the land, they will be making the decision if this is strong enough. **REP. MANGAN** said the word "commitment" is not as strong as "agreement". Is that word strong enough? Shouldn't there be an "agreement" on what services would be made available for the school district; who is responsible for liability insurance, if reversion is necessary, what factors would make that happen? **SENATOR THOMAS** said they are using the word "commitment" on purpose. He understands the point that what works for this project might not be good down the road, where there should be something agreed to contractually. That is something you would need to weigh. The same kind of rules will apply to other districts as they do this one. Would encourage the language be left as it is. We are talking about valuable property of a local school district, and they are going to be very cautious and careful with anything of this nature. This won't be for everybody, but it could be.

REP. MANGAN said his concern is that something is in place so the school district doesn't get stuck holding the bill for a liability problem or a lawsuit because someone fell in the parking lot and got hurt. Wants to make sure the school district is not sued. Or, there wasn't enough liability insurance or it lapsed, etc., or it doesn't revert to the school district. Does the School Board Association have any of those concerns? Would they like to see something more substantial, not necessarily in the language **SENATOR THOMAS** proposed; but the only thing is a reversionary clause for the exchange. Is it necessary to have an agreement somewhere else to cover those other potential concerns that the school district and the school board might have? **Bob Vogel, MSBA** said the School Boards Association is very comfortable with this language and has already worked very closely with **SENATOR THOMAS** on it. It is a binding commitment, not just a commitment, and it does have to go from the local school district to a vote of the public. Anytime that happens, there will be written documents provided, and the community will

be aware of all the risks involved before they approve a resolution that would go to Ballot. They believe this language and that approach cover those concerns.

REP. ANDERSEN asked about the reversionary clause. What would happen if you went through everything, the community voted, etc.; would it be necessary for the foundation to prove that they have the funding intact to complete this project? If they did not have it and everything moved forward, perhaps the project could get 2/3 built and there is no more money. If it reverted to the school board at that time, they would be left with this project that would probably be a liability to them. Before the vote, would there need to be some type of assurance from the foundation that the funding is in place and there is adequate funding to complete the project as anticipated when it is presented to the people? **SENATOR THOMAS** said no. You could do it that way, but in this case they need to get the land in the foundation's name and start moving forward. That is part of the deal. This is a local decision that is based on who brings the project forward, and on public confidence in the foundation, the project, the school board. The confidence has to be there; if it isn't, it won't pass public muster. The voters should be able to do whatever they want with the land, and in this case, they would be able to build a community fine arts complex.

REP. LEHMAN said you indicated several instances throughout the state where similar instances were possible; can you be more specific? **Dave Puyear, MREA** said he could not give actual school districts, but as they discussed this Bill with their 12 member State Board of Directors, this was of high interest and he was directed on behalf of the board to report that there are a number of schools and groups around the state that are looking at the same kind of private public enterprise. That is why they supported the Bill. **REP. LEHMAN** asked if there were any specific situations currently? **Dave Puyear** said yes, there are several districts in eastern Montana but he does not have the names of the districts.

REP. PETERSON asked about Line 30 on Page 1 and Line 3 of Page 2 where it talks about "commitment". What do you envision the form of a binding commitment would be? **SENATOR THOMAS** defers to **John Powell, SCF**, who said they do have in mind more of a commitment, and the school board and the foundation have been working on them. There will be specific clauses on timing and moving forward when certain funds are raised; so there will be both years and dollars involved in that commitment. The majority of the complex is on the land the foundation has purchased. In order for this to be deeded, they will have the funds to move forward. Local boards are not going to enter into something like

this unless they feel the property is protected. **REP. PETERSON** asked if this will be a written document that the foundation and the school district both sign? **John Powell** said they have a preliminary lease arrangement allowing them in concept to move forward and be talking about this. Even in that situation, the wording is already there that is binding as to when the land will be available, as far as the usage of the school superceding the use of the public for certain portions of the building. It is already getting very tight. **REP. PETERSON** asked why they don't call it a binding agreement rather than a commitment? **John Powell** said that might be fine for them, but they were concerned that it might not fit somewhere like Circle, MT. That it might not be a community center, it may be something else under consideration. They were trying to permit flexibility, yet be tight enough to protect the public. **REP. PETERSON** said he heard about a case in the U. S. Supreme Court that deals with separation of church and state. The case has to do with a religious group using school facilities for conducting Bible studies after school hours. Are there going to be any restrictions on the use of this facility for any group in the community? **John Powell** said there will be no restrictions; and it is not a school facility. The facility is more than just the portion they are trading in kind in their agreement. They are specifically putting the studio and the use of the performing arts portions, which are very accessible, down at one end of the building. The balance of the building is available for different functions and is designed for community functions such as weddings and gun shows. There may be some use that is inappropriate, and they will have to work that out at that point.

REP. MANGAN said he is going to propose an amendment in executive action to change "commitment" to "agreement". It sounds like that is what you are already doing in this project. Is not concerned about Stevensville, but is concerned about other places that may want to do this. **John Powell** said he understands the cautions and agrees with them. He will have the School Board Association evaluate this and communicate their decision.

CHAIRMAN MASOLO asked **Bob Vogel** if he would like to comment. **Bob Vogel, SCF** said he is not prepared to comment at this point because he is not an attorney. He will consult their counsel and they will determine if there is any difference between "commitment" and "agreement".

Closing by Sponsor:

SENATOR THOMAS said he appreciates the concern about this legislation and hopes that this will be seen as good legislation to pass.

Hearing closed on SB 130.

EXECUTIVE ACTION ON HB 31 and HB 121

REP. WOLERY made a motion to postpone action for two weeks, to March 16.

REP. GALVIN-HALCRO said she would like to discuss these bills next Friday, March 9, and if needed could extend it out further. Two weeks seems almost like infinity.

CHAIRMAN MASOLO said she would feel comfortable with the two weeks, rather than to go back and forth with them.

REP. WADDELL said he is concerned that they don't consider these two Bills in isolation, when there are some Senate Bills coming down the line that are similar and they should all be considered together. He thinks two weeks is a good motion and this would allow time to consider them all together.

REP. MANGAN said as a point of order, the appropriate motion would be to reconsider each Bill, then move to postpone for the day. Legally, each should be done separately.

Motion: **REP. WOLERY** moved to reconsider HB 121. Motion passed unanimously.

Motion: **REP. WOLERY** moved to reconsider HB 121 on March 16.

REP. MANGAN said he agrees that two weeks is a long time. It doesn't matter when we discuss this, but we know we can't do it before March 16. If a situation happens before the 16th, we can't do it until the 16th, because we are moving to a day certain, we can't legally consider them before. He recommends that if we have this five minute discussion next Friday to do it again, it is better than doing something we won't be able to do anything about until the 16th. He would feel more comfortable with the 9th.

Legislative Staffer Connie Erickson said to be on the safe side, they should set it for next week and then take the five minutes on Friday to do it again. There are other bills coming from the Senate, SB 70 for example, is also a change in entitlement, and has not been reported out of Senate Education yet. LC 896 will most likely be introduced next week; it is a major school funding Bill. There are other things out there. As far as the issue of postponing to a day certain, which means that you cannot take action until that day, she is not sure.

CHAIRMAN MASOLO asked **REP. MANGAN** if this has happened on another Committee. **REP. MANGAN** said this exact situation has not happened before for several sessions. A point of order; the reason for postponement to a day certain motion is so we have to get to the Bill, so we don't have these postponing motions on every single bill we have and people can bring them up every day.

CHAIRMAN MASOLO asked **REP. MCKENNEY** what his opinion was. **REP. MCKENNEY** refers to Page 64 of the Rule Book, Item #12 concerning Committee Action. It says that a Committee may reconsider any action as long as the matter remains in the possession of the Committee. That would mean that even if we went out two weeks, we could still reconsider that action.

CHAIRMAN MASOLO said she agreed with that. The rule does say the Committee may reconsider any action as long as the Bill is still in the possession of the Committee. Looking at the two rules together, House Rule 30-50, which is Procedures, sub section 12, would allow a Committee to reconsider an action that it has taken at any time. That would most likely include an action to postpone. **CHAIRMAN MASOLO** said that as Chairman she will rule that they may go ahead and postpone this until March 16 and reconsider it if they need to before that.

Motion: **REP. WOLERY** moved to postpone HB 121 until March 16. Motion passed 11-5, with **Jacobson, Bixby, Galvin-Halcro, Branae and Mangan** voting No.

Motion: **REP. WOLERY** moved to reconsider HB 31. Motion passed 18-0.

Motion: **REP. WOLERY** moved to postpone discussion on HB 31 until March 16.

REP. MANGAN had a point of order and asked for the same comments on HB 31 and HB 121. **CHAIRMAN MASOLO** said she is going with the House Rules, Page 64, #12 that says a Committee may reconsider any action as long as the matter remains in the possession of the Committee. Along with HB 31. **CHAIRMAN MASOLO** said the motion is to reconsider HB 31 and to postpone action until March 16.

Motion: **REP. WOLERY** moved to postpone discussion on HB 31 until March 16. Motion passed 11-5, with **MANGAN, BRANAE, GALVIN-HALCRO, BIXBY, and JACOBSON** voting No.

CHAIRMAN MASOLO asked **REP. MANGAN** if he would take care of the Amendment on SB 130. **REP. MANGAN** replied that he would.

ADJOURNMENT

Adjournment: 4:00 P.M.

REP. GAY ANN MASOLO, Chairman

LINDA KEIM, Secretary

GM/NR

EXHIBIT (edh48aad)